THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No. 23936 OF 1997

DATE:

Sunilal Burman … Petitioner

And

1. The Union of India rep. By the Director General, G.I.S.F. New Delhi and 2 others … Respondents

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No. 23936 OF 1997

ORDER:

The petitioner, an erstwhile Constable of the Central Industrial Security Force (C.I.S.F) hitherto posted at the Hindustan Zinc Ltd., Visakhapatnam, has filed the present writ petition aggrieved by the order of the disciplinary authority dated 16/17.4.1990 imposing on him the punishment of dismissal from service, as confirmed in appeal on 10.5.1990 and in revision on 22.1.1997.

The allegation levelled against the petitioner was that, while he was on night duty on 9/10.8.1989 at the zinc electrolysis furnace of the Hindustan Zinc Ltd., and on completion of his night duty while he was on his way out of the plant his rain coat was checked and was found to contain 4.00 Kgs of impurified silver pieces concealed therein. It was ascertained that the silver material detected belonged to the Hindustan Zinc Limited, weighed about 4-00 Kgs and was worth Rs.16,400/-. The petitioner was handed over to the police and was subsequently placed under suspension. An enquiry was held. The disciplinary authority, on going through the statements of the prosecution witnesses and the enquiry report, held that all the prosecution witnesses had deposed that the silver material, about 4.00 Kgs in weight, was

seized from the petitioner on 10.8.1989 at 0525 hours while he was trying to take the same out of the zinc plant through the main gate of Hindustan Zinc Ltd and that he was caught red handed. The disciplinary authority imposed on the petitioner the punishment of dismissal from service.

Sri C.Ramachandra Reddy, learned counsel for the petitioner would question the impugned order of punishment passed by the disciplinary authority, as confirmed in appeal and in revision, on the following grounds:

(1) The petitioner's request for adjournment of the enquiry proceedings was refused without justifiable reason and the enquiry proceeded with. Failure to accommodate the petitioner by granting him necessary adjournments was in violation of principles of natural justice;

(2) Since no employee of the C.I.S.F had come forward to assist the petitioner in the departmental enquiry he had sought legal assistance of an employee of M/s Hindustan Ship Yard and denial thereof was in violation of principles of natural justice;

(3) The punishment imposed on the petitioner was shockingly disproportionate since the amount involved was not very high and was approximately Rs.16,400/-. This, coupled with the fact that his earlier record was clean, necessitated a lenient view being taken;

(4) The petitioner was acquitted in the criminal case and since the charges in the disciplinary proceedings and the criminal case are more or less identical, the petitioner's

acquittal would necessitate disciplinary proceedings being set aside.

With regards the first contention of the petitioner being denied adjournments by the enquiry officer, it is necessary to note that the petitioner sought adjournment on the ground that a criminal case was pending against him. One such request was rejected on 6.11.1989 and he was asked to participate in the enquiry proceedings to be held on 9.11.1989. The petitioner reiterated his request and, vide proceedings dated 15.11.1989, the Group Commandant, CISF Head Quarters, Hyderabad, informed him that his application for adjournment of the departmental enquiry was considered and rejected since the disciplinary authority was competent to initiate disciplinary proceedings during the pendency of the criminal proceedings. The mere fact that he made a request that the disciplinary enquiry be adjourned does not necessitate an adjournment being granted. In the absence of a specific order acceding to his request for adjournment of the enquiry, it was incumbent on the petitioner to have participated in the departmental enquiry. Merely by submitting a letter seeking adjournment, it was not open to the petitioner to avoid participation in the enquiry proceedings and, since he failed to so participate, the action of the respondents in proceeding with the departmental enquiry cannot be faulted.

With regards the petitioner's contention that he was not permitted to take the assistance of an employee of Hindustan Ship Yard, it is necessary to note that the Central Industrial Security Force Act (Central Act 50 of 1968) prescribes the procedure for

imposing major penalties. Under Section 2(ab) 'Force' is defined to mean the Central Industrial Security Force constituted under Section-3. Under Section 2(f), the term 'members of the force' is defined to mean a person appointed to the Force under the Act. Section-3 relates to constitution of the Force and under sub-section(1) thereof, there shall be constituted and maintained by the Central Government an Armed Force of the Union to be called the Central Industrial Security Force for the better protection and security of Industrial undertakings owned by the Central Government. Under sub-section (2) the Force is required to be constituted in the manner and to consist of such member of "supervisory office, subordinated officers, under officers and other enrolled members" who shall receive such pay or and other remuneration as may be prescribed. Thus a member of a Force should be a person appointed to the C.I.S.F. Section 34(5) provides that a member of the Force so charged may be permitted by the enquiring authority to present his case with the assistance of any other member of the Force approved by it. Under Section 34(5) a discretion is conferred on the enquiry officer to permit the charged employee to take the assistance of persons appointed to the CISF. The Central Industrial Security Force Act does not enable the petitioner to take the assistance of a person who is not a member of the C.I.S.F. Since the validity of Section 34(5) of the Central Industrial Security Force Act, 1968 is not under challenge, and as there is a presumption about the constitutionality of these statutory provisions, the petitioner's contention that denying him the benefit of assistance of an

employee of Hindustan Ship Yard was in violation of principles of natural justice must be rejected.

On the quantum of punishment, it is not clear whether the petitioner's earlier record is clean. Even if it were to be held that the petitioner did not suffer any punishment earlier, the charge held established in the enquiry is of theft of 4.00 Kgs of silver belonging to the Hindustan Zinc Limited to which the C.I.S.F. was providing security. The petitioner, a constable belonging to the C.I.S.F, was posted at Hindustan Zinc Limited to protect the property of the said public sector undertaking. The petitioner, instead of protecting the property, had himself indulged in acts of theft. The punishment imposed on him, in such circumstances, cannot be said to be disproportionate. The jurisdiction of this Court under Article 226 of the Constitution of India, to interfere with the quantum of punishment imposed, is limited. The nature and extent of punishment to be imposed on an employee is, ordinarily, in the employer's realm. It is only when the punishment imposed is one which should not have been imposed at all or is one which shocks its conscience would this Court be justified in interfering with the quantum of punishment. In the present case, the charge held established against the petitioner was of theft of company's property to which the C.I.S.F. was providing security cover. The discipline and integrity required to be maintained by members of the Armed Forces is of a very high order. The contention that the punishment imposed is disproportionate must also fail.

As noted above, the order of the disciplinary authority

imposing on the petitioner the punishment of dismissal from service is dated 16/17 April, 1990. His acquittal in the criminal case was more than six years thereafter on 4.7.1996. It is well settled that a prior conviction in a departmental enquiry, cannot be set at naught on the delinquent's subsequent acquittal in a criminal case (**Depot Manager, A.P.S.R.T.C v. D.Vykuntarao**[1]). This contention must also fail.

The writ petition as filed is without merit and is accordingly dismissed. No order as to costs.

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5-3-2007

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[1] 2006(4) ALT 668 (DB)